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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

REGINA SANCHEZ, individually and)	Case No.
on behalf of all others similarly situated,))	
Plaintiff,)	<u>CLASS ACTION</u>
vs.)	COMPLAINT FOR VIOLATIONS
)	OF:
GREEN TREE SERVICING LLC, and)	1. VIOLATIONS OF
DOES 1 through 10, inclusive, and each)	ELECTRONIC FUNDS
of them,)	TRANSFER ACT [15 U.S.C.
)	§1693 ET SEQ.]
Defendants.)	<u>DEMAND FOR JURY TRIAL</u>
)	

Plaintiff REGINA SANCHEZ ("Plaintiff"), on behalf of herself and all others similarly situated, alleges the following against Defendant GREEN TREE SERVICING LLC upon information and belief based upon personal knowledge:

///

NATURE OF THE CASE

1. Plaintiff’s Complaint is brought pursuant to the Electronic Funds Transfer Act, 15 U.S.C. 1693 et seq. (“EFTA”).

2. Plaintiff, individually, and on behalf of all others similarly situated, brings this Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Defendant debiting Plaintiff's and also the putative Class members' bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated for preauthorized electronic fund transfers from Plaintiff's and also the putative Class members' accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b). Plaintiff alleges as follows upon personal knowledge as to herself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.

JURISDICTION & VENUE

3. This Court has jurisdiction under 28 U.S.C. 1331, because this action is brought pursuant to the EFTA, 15 U.S.C. 1693 *et seq.*

4. Jurisdiction of this Court arises pursuant to 15 U.S.C. 1693(m), which states that, “without regard to the amount in controversy, any action under this section may be brought in any United States district court.”

1 5. Venue and personal jurisdiction in this District are proper pursuant to
2 28 U.S.C. 1391(b) because Plaintiff Regina Sanchez resides within this District,
3 in San Bernardino California, and Defendant does or transacts business within
4 this District, and a material portion of the events at issue occurred in this
5 District.
6

7
8 **PARTIES**
9

10 6. Plaintiff is a natural person residing in San Bernardino County,
11 California.
12

13 7. Within the last year, Defendant attempted to collect consumer debts
14 from Plaintiff.
15

16 8. Defendant is a collection agency with principal place of business in
17 Minnesota and state of incorporation in Delaware.
18

19 9. Defendant is a business entity provides and collects on home loans
20 within the State of California.
21

22 10. Defendant acted through its agents, employees, officers, members,
23 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
24 representatives, and insurers.
25

26 **FACTUAL ALLEGATIONS**
27

28 11. In or around 2015, Defendant began contacting Plaintiff in attempt

1 to collect a consumer debt from Plaintiff.

2 12. Plaintiff spoke with a representative of Defendant in effort to
3 resolve the outstanding Account.
4

5 13. During phone conversations, and at Defendant's urging, Plaintiff
6 agreed orally to allow Defendant to electronically draw a one-time fixed sum of
7 \$138.36 out of Plaintiff's checking account towards resolution of the
8 outstanding Account, until further notice.
9

10 14. Defendant did not provide to Plaintiff, nor did Plaintiff execute, any
11 written or electronic writing memorializing or authorizing recurring or
12 automatic payments.
13
14

15 15. Plaintiff did not provide Defendant either with a written or an
16 electronic signature authorizing the recurring or automatic payments.
17

18 16. Despite these facts, Defendant continued to draw unauthorized
19 amounts on a recurring basis from Plaintiff's checking account.
20

21 17. On February 2, 2015, withdrew \$150.36 in two withdrawals. The
22 first withdrawal was for \$138.36 and the second withdrawal was for \$12.00,
23 which was done without Plaintiff's authorization.
24

25 18. On March 30, 2015, again without Plaintiff's permission, Defendant
26 withdrew \$139.00 from Plaintiff's account.
27

28 19. Then, again without Plaintiff's permission, on April 24, 2015

1 Defendant withdrew \$138.36.

2 20. Because of the foregoing, Plaintiff has continued to have the
3 unauthorized amounts electronically drawn from her personal checking
4 account, has repeatedly been placed in jeopardy of incurring overdraft penalties
5 and fees with her bank, and has risked adverse entries on her credit report and
6 financial history as a result of Defendant's unauthorized acts.
7
8

9
10 **CLASS ALLEGATIONS**

11 21. Plaintiff brings this action on behalf of herself and all others similarly
12 situated, as a member of the proposed class (hereafter "The Class") defined as
13 follows:
14

15 All persons in the United States whose bank accounts
16 were debited on a reoccurring basis by Defendant
17 without Defendant obtaining a written authorization
18 signed or similarly authenticated for preauthorized
19 electronic fund transfers within the one year prior to the
20 filing of this Complaint.
21

22 22. Plaintiff represents, is a member of, The Class, consisting of all
23 persons within the United States whose bank account was debited on a recurring
24 basis by Defendant without Defendant obtaining a written authorization signed or
25 similarly authenticated for preauthorized electronic fund transfers within the one
26 year prior to the filing of this Complaint.
27
28

1 23. Defendant, its employees and agents are excluded from The Class.
2 Plaintiff does not know the number of members in The Class, but believes the
3 Class members number in the thousands, if not more. Thus, this matter should be
4 certified as a Class Action to assist in the expeditious litigation of the matter.
5

6 24. The Class is so numerous that the individual joinder of all of its
7 members is impractical. While the exact number and identities of The Class
8 members are unknown to Plaintiff at this time and can only be ascertained
9 through appropriate discovery, Plaintiff is informed and believes and thereon
10 allege that The Class includes thousands of members. Plaintiff alleges that The
11 Class members may be ascertained by the records maintained by Defendant.
12
13

14 25. This suit is properly maintainable as a class action pursuant to Fed. R.
15 Civ. P. 23(a) because the Class is so numerous that joinder of the Class members
16 is impractical and the disposition of their claims in the class action will provide
17 substantial benefits both to the parties and to the Court.
18
19

20 26. There are questions of law and fact common to the Class affecting the
21 parties to be represented. The questions of law and fact to the Class predominate
22 over questions which may affect individual Class members and include, but are
23 not necessarily limited to, the following:
24
25

- 26 a. The members of the Class entered into oral agreements with
27 Defendant to have automatic, or recurring, electronic payments
28

1 drawn from their personal accounts to be paid to Defendant towards
2 settlement of the Class members' outstanding accounts with
3 Defendant.
4

5 b. The members of the Class were not provided with, nor did
6 they execute, written agreements memorializing the automatic or
7 recurring electronic payments.
8

9 c. Defendant did not request, nor did it provide, Class members
10 with written agreements memorializing the automatic or recurring
11 electronic payments.
12

13 d. The members of the Class did not provide either a written
14 ("wet") or otherwise electronic signature authorizing the automatic
15 or recurring electronic payments.
16

17 e. Despite not providing written or electronic authorization for
18 payments to be drawn from their accounts, Defendant took
19 unauthorized payments from Class members' accounts.
20

21 f. The unauthorized payments taken by Defendant frequently
22 subjected Class members to non-sufficient funds ("NSF") fees,
23 penalties, and other charges to be incurred by the Class members at
24 their respective financial and banking institutions, as well as
25 negative reporting to Class members' credit histories, with serious
26
27
28

adverse consequences to the Class members' credit-worthiness.

27. As persons whose bank accounts were debited on a reoccurring basis by Defendant without Defendant obtaining a written authorization signed or similarly authenticated for preauthorized electronic fund transfers, Plaintiff is asserting claims that are typical of The Class.

28. Plaintiff will fairly and adequately protect the interests of the members of The Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

29. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

30. The prosecution of separate actions by individual Class members

1 would create a risk of adjudications with respect to them that would, as a practical
2 matter, be dispositive of the interests of the other Class members not parties to
3 such adjudications or that would substantially impair or impede the ability of such
4 non-party Class members to protect their interests.
5

6 31. Defendant has acted or refused to act in respects generally applicable to
7 The Class, thereby making appropriate final and injunctive relief with regard to
8 the members of the Class as a whole.
9

10 32. Defendant failed to comply with the writing and notice requirements of
11 § 907(a) of the EFTA, 15 U.S.C. § 1693e(a) as to the Class members with respect
12 to the above alleged transactions.
13

14 33. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a
15 “preauthorized electronic fund transfer from a consumer’s account may be
16 authorized by the consumer only in writing, and a copy of such authorization
17 shall be provided to the consumer when made.”
18

19 34. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the
20 term “preauthorized electronic fund transfer” means “an electronic fund transfer
21 authorized in advance to recur at substantially regular intervals.”
22

23 35. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that
24 “[p]reauthorized electronic fund transfers from a consumer’s account may be
25 authorized only by a writing signed or similarly authenticated by the consumer.
26
27
28

1 The person that obtains the authorization shall provide a copy to the consumer.”

2 36. Section 205.10(b) of the Federal Reserve Board's Official Staff
3
4 Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he
5 authorization process should evidence the consumer’s identity and assent to the
6 authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary further
7
8 provides that “[a]n authorization is valid if it is readily identifiable as such and
9 the terms of the preauthorized transfer are clear and readily understandable.” *Id.*
10 at ¶10(b), comment 6.
11

12 37. In multiple instances, Defendant debited bank accounts of the Class
13
14 members on a recurring basis without obtaining a written authorization signed or
15 similarly authenticated by the respective Class members for preauthorized
16
17 electronic fund transfers from the accounts of the respective Class members,
18
19 thereby violating § 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section
20 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).
21

22 38. In multiple instances, Defendant debited Class members’ bank
23
24 accounts on a recurring basis without providing a copy of a written authorization
25
26 signed or similarly authenticated by the respective Class members for
27
28 preauthorized electronic funds transfers, thereby violating Section 907(a) of the
EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. §
205.10(b).

1 39. Pursuant to Fed. R. Civ. P. 23, a class action is appropriate and
2 preferable because, on information and belief, the putative class consists of
3 hundreds, if not thousands, of individuals and is so numerous that joinder of all
4 putative class members, whether otherwise required or permitted, is
5 impracticable. The actual number of putative class members is in the exclusive
6 control of Defendant.
7
8

9 40. Pursuant to Fed. R. Civ. P. 23, a class action is appropriate and
10 preferable, because Plaintiff will fairly and adequately protect the interests of the
11 Class and Plaintiff has hired counsel able and experienced in class action
12 litigation.
13
14

15 41. Pursuant to Fed. R. Civ. P. 23(b)(3), class certification is appropriate
16 because this Court and the parties would enjoy economies in litigating common
17 issues on a class-wide basis instead of a repetitive individual basis.
18

19 42. Pursuant to Fed. R. Civ. P. 23(b)(3), class certification is appropriate
20 because the size of each putative class member's actual damages is too small to
21 make individual litigation an economically viable option.
22

23 43. Pursuant to Fed. R. Civ. P. 23(b)(3), class certification is appropriate
24 because no unusual difficulties will likely occur in the management of the Class
25 as all questions of law or fact to be litigated at the liability stage are common to
26 the putative class and all compensatory relief is concomitant with a liability
27
28

1 finding and can be calculated by automated and objective means.

2 44. The size and definition of the Class can be identified through
3 Defendant's records and/or Defendant's agents' records.
4

5 **FIRST CAUSE OF ACTION**

6 **Violations of the Electronic Funds Transfer Act**

7 **15 U.S.C. §1693 et seq.**
8

9 45. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a
10 "preauthorized electronic fund transfer from a consumer's account may be
11 authorized by the consumer only in writing, and a copy of such authorization
12 shall be provided to the consumer when made."
13

14 46. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the
15 term "preauthorized electronic fund transfer" means "an electronic fund transfer
16 authorized in advance to recur at substantially regular intervals."
17
18

19 47. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that
20 "[p]reauthorized electronic fund transfers from a consumer's account may be
21 authorized only by a writing signed or similarly authenticated by the consumer.
22 The person that obtains the authorization shall provide a copy to the consumer."
23

24 48. Section 205.10(b) of the Federal Reserve Board's Official Staff
25 Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that "[t]he
26 authorization process should evidence the consumer's identity and assent to the
27
28

1 authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary further
 2 provides that “[a]n authorization is valid if it is readily identifiable as such and
 3 the terms of the preauthorized transfer are clear and readily understandable.” *Id.*
 4 at ¶10(b), comment 6.

6 49. In multiple instances, Defendant has debited Plaintiff’s and also the
 7 putative Class members’ bank accounts on a recurring basis without obtaining a
 8 written authorization signed or similarly authenticated for preauthorized
 9 electronic fund transfers from Plaintiff’s and also the putative Class members’
 10 accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a),
 11 and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).
 12
 13
 14

15 50. In multiple instances, Defendant has debited Plaintiff’s and also the
 16 putative Class members’ bank accounts on a recurring basis without providing a
 17 copy of a written authorization signed or similarly authenticated by Plaintiff or
 18 the putative Class members for preauthorized electronic fund transfers, thereby
 19 violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section
 20 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).
 21
 22
 23

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

- 26 1. That this action be certified as a class action on behalf of The Class and
 27 Plaintiff be appointed as the representative of The Class;
 28

2. Statutory damages of \$1,000.00, per Class Member, pursuant to the Electronic Fund Transfer Act, §916(a)(2)(A);
3. Actual damages;
4. Costs and reasonable attorneys' fees pursuant to the Electronic Fund Transfer Act, §916(a)(3);
5. For prejudgment interest at the legal rate; and
6. Any other relief this Honorable Court deems appropriate.

Respectfully Submitted this 22nd day of July, 2015.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff